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# YALE LAW JOURNAL

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Vol. XX

JUNE, 1911

No. 8

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## THE CRIME PROBLEM

*By Frank H. Norcross, Justice of the Supreme Court of Nevada.*

The remarks of President Taft upon the administration of civil and criminal law in this country, has attracted the wide attention and comment that an utterance from so eminent a jurist and statesman commands.

It would be difficult to frame a more severe indictment of the administration of criminal law in this country, than that stated by the President.

"It is not too much," he says, "to say that the administration of criminal law in this country is a disgrace to our civilization, and that the prevalence of crime and fraud, which here is greatly in excess of that in European countries, is due largely to the failure of the law and its administration to bring criminals to justice."

While we ought, doubtless, to interpose a plea of guilty to the indictment, nevertheless, something may be said, I think, in extenuation.

Neither the law nor its administration, in my opinion, ought to be blamed too severely because of the existence of a greater proportion of crime in this country than in European countries. Ours is a new country, comparatively, and new countries usually excel in crime because conditions have not reached that settled state that prevails in older countries. Then, too, we are a cosmopolitan nation and our ports for many years have been open to all stratum of European society and not a little of the criminal element of Europe has found a permanent abiding place in the United States. One needs but a glance at the records of our prisons to find that many foreign countries have had a measure of relief, at our expense, from the criminal class.

Much as I respect the views of our distinguished President, I am unable to entirely agree with him that the main difficulty with our criminal problem lies in "undue delay" in court procedure. None will deny the fact that there is room for improvement in the matter of procedure and that so much delay is unjustifiable. Many wise suggestions have been offered that will, when adopted, in a measure at least, eventually remedy the defects in our procedure. It is very generally agreed by criminologists that certainty and celerity of punishment is far more potent in the prevention of crime than severity. But, if we do nothing more than perfect our court machinery, I believe we will find that we have only made a slight impression upon what is one of the greatest social problems with which the law has to deal. If a city is being supplied with milk filled with the germs of typhoid, the most advanced medical treatment would doubtless help to allay the ravages of the disease, but a pure milk supply would do a great deal more good. So it is with the crime problem. We have greater need to look to the source of crime than to advanced methods of harvesting the ripened fruit, if we are to make any great headway in accomplishing practical results in reducing crime.

With our present antiquated court procedure we manage to keep our jails and prisons fairly well filled to capacity in spite of the delays that work an unjust hardship alike upon the people and the accused. I believe much good will be accomplished by the adoption of certain reforms in our procedure that have been suggested by eminent judges and lawers. We ought to do away with the undue amount of protection that is afforded the person charged with crime, whereby he may not be required to testify relative to the offense for which he is charged, and which prohibits the prosecuting attorney from commenting upon his failure to testify in his own behalf. There was some reason for such a rule when it was engrafted upon the law, for then one charged with crime could not become a witness in his own behalf. The barbarous methods of criminal procedure of centuries ago, which afforded a basis for the rule, having long ago ceased to exist, the rule should cease also. The rule is a shield to the guilty only. Its abolition would not only be a powerful aid in arriving at the truth, which is the object of all trials, but it would be a means of protecting the prisoner from the unlawful, and sometimes barbarous inquisitions comprehended under the so-called "third degree."

Three-fourths of a jury ought to be permitted to find a verdict and our appellate procedure should provide for reversals only in cases where it manifestly appears that the defendant has been denied a fair and impartial trial or where from the entire case it appears that there has been a miscarriage of justice. These and other reforms in our procedure will do something to avoid what is now a just cause of complaint, but those who are of the opinion that they will prove a solution of the vexed question, will, I believe, discover that they have greatly over-estimated their importance.

After having served for a number of years as a prosecuting officer, as a judge and as a member of the Board of Pardons and Parole of my state, I have come to the conclusion that the greatest weakness of our whole system of dealing with crime lies in the methods both before and after the courts have played their part in determining the question of the defendant's gift. As long as we pay little heed to the causes which produce crime and add to this a prison and jail system that tends to make bad or unfortunate men worse, we will accomplish very little in finding a solution of the crime problem.

In Professor Munsterberg's book, "On the Witness Stand," the author says:

"At last this conviction is making its way everywhere: prevention of crime is more important than treatment of crime. It is claimed that this country spends annually five hundred million dollars more on fighting the existing crime than on all its works of charity, education and religion; the feeling is at last growing that a fraction of that expense and energy would be ample for providing that such a quantity of habitual crime should not come to existence at all. For such a result, however, it is essential that all social factors co-operate in harmony and that no science which may contribute to this tremendous problem hold back."

If, as a Nation, we are annually spending as much or more money in fighting crime than it will cost to build the Panama Canal, it is time the Nation took steps to make a scientific investigation of the underlying causes that produce so much crime and for a study of the best methods of combatting the evil.

If environment and heredity play the parts in producing crime, which many criminologists assert, such fact should be demonstrated and the best methods of prevention agreed upon. Much of our crime is undoubtedly due to conditions surrounding the young during the formative period of their lives. This char-

acter of criminals will not be reduced in number or their reformation accomplished by means of excessive or cruel punishment.

In addition to doing everything that can reasonably be done to remove the causes of crime, we must improve our system of dealing with the convicted criminal. If he is a confirmed criminal we may not be able to accomplish much for him in the way of reformation, and society has a right to protect itself from individuals of this class the same as it has from the insane. Society has no right to provide and cannot justify means and methods of punishment that in themselves are debasing. Such methods of punishment are not only a wrong to the prisoner but they are an absolute injury to society.

Our present prison and jail system, generally speaking, is at least a century behind our civilization in other respects.

Delays and occasional miscarriages of justice in the courts have had the effect of creating the impression that in our court procedure lies the great fault of our penal system, largely from the fact that such defects are obvious and are so frequently magnified by the press. This conclusion, I am firmly convinced, is not only a mistake, but I am of the opinion that by far the greater number of miscarriages of justice have been and are buried from the knowledge of the general public behind the stone walls and iron bars of our prisons. Most of our prisoners are gathered from the ranks of the friendless and unfortunate, and the public neither knows or cares what becomes of them, but society cannot escape the penalty which a wrong penal system imposes. We, in this country, pride ourselves upon our humanity and we are horrified when we read of the barbarities practiced in the prisons of some foreign countries. Some day, I believe, we will awake to the realization that the United States, in this progressive Twentieth Century, is not in a position to throw stones at our neighbors. If a man commits an offense for which a years' imprisonment would be a just punishment and the court awards him five or ten years, is it not a miscarriage of justice? Our prisons are full of cases of this character, but because the prisoner has few, if any, influential friends, the public rarely ever knows of or cares about the injustice that is done him. He himself realizes it fully and he leaves the prison an enemy of society. The suspended sentence, the indeterminate sentence and the parole system, where adopted and intelligently administered, will do a great deal to remedy the evils of the old system. When we adopt methods of dealing with law-breakers that will be reformatory in fact as well as in name,

and will do away with a system that too frequently inflicts a greater wrong upon the prisoner than the wrong he committed against society, we can begin to look for good results from our penal system.

The greatest need in our whole system is: elimination of the conditions mainly responsible for crime, and a more just treatment of the offender, so that he has a fair opportunity for reformation.

Crime is about the greatest problem with which this country has to deal. The expense it entails is tremendous—an expense which adds nothing to the progress of the world. The Nation could find no better way to spend a small portion of its revenue than to provide for a commission composed of the most eminent criminologists, whose duty it would be to make a study of crime from all its aspects, with the view of reporting the best methods of dealing with the whole situation. This would doubtless require a number of years of study, but I am confident that it would result in the recommendation of methods which, when adopted, would not only result in decreasing crime, but would make a tremendous saving from the expense which our antiquated methods now entail.

*F. H. Norcross.*